



Signed and Filed: October 2, 2023

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re:) Bankruptcy Case
) No. 19-30088-DM
PG&E CORPORATION,)
) Chapter 11
 - and -)
) Jointly Administered
PACIFIC GAS AND ELECTRIC COMPANY,)
)
 Reorganized Debtors.)
)
☐ Affects PG&E Corporation)
☐ Affects Pacific Gas and)
 Electric Company)
☒ Affects both Debtors)
* All papers shall be filed in)
the Lead Case, No. 19-30088 (DM).)

MEMORANDUM DECISION ON OBJECTION TO PROOF OF CLAIM
OF SYNERGY PROJECT MANAGEMENT, INC.

I. Introduction

The court held a hearing on September 12, 2023 on the Objection (Dkt. 13670) by the Reorganized Debtors ("Debtors") to the proof of claim filed by Synergy Project Management, Inc. ("SPM"). Appearances were noted on the record. For the reasons that follow, the court will sustain the objections and disallow

SPM's claim filed on October 20, 2019, as amended on May 10, 2023.

II. Background¹

The parties are quite familiar with SPM's status as a subcontractor of Ghilotti Brothers, Inc. ("GBI") pursuant to a sewer replacement and water main installation project in San Francisco in 2015 described generally as the "Haight Project". In short, the Haight Project began in the spring of 2015 and between April and October of 2015, at least six incidents occurred that are at the core of the present dispute. Five of the incidents have been described as "gas strikes"; one has been described as an "electrical strike".

After litigation before a hearing officer, the City and County of San Francisco ("CCSF") terminated SPM as the subcontractor for GBI. Over time, SPM blamed Debtors for causing the situation that led to those strikes; by June 2017, Debtors denied most of SPM's claims.

Debtors filed their Chapter 11 on January 29, 2019. On October 20, 2019, SPM filed Proof of Claim Co. 72390 ("Initial POC"). On May 10, 2023, SPM filed Amended Proof of Claim No. 109882 ("Amended POC"). The Initial POC and the Amended POC each seek damages in the amount of \$5,697,441.76. The basis of the claim is "damages relating to strikes, fraud and related business damages." (See Initial POC and Amended POC at ¶ 8.) The Initial POC contains a four-and-a-half page narrative describing the five gas strikes and one electrical strike and

¹ The following discussion constitutes the court's findings of fact and conclusions of law. Fed. R. Bankr. P. 7052(a).

1 related impact delays totaling \$337,441.76 in damages. Each
2 then adds "damage to business due to PG&E
3 fraud/misrepresentations" in the amount of \$5,360,000. The
4 narrative continues by reciting that Debtors made multiple
5 representations to CCSF denying that they were responsible for
6 the strikes that resulted in commencement of proceedings
7 initiated by CCSF to remove SPM as GHI's subcontractor on the
8 Haight Project. It adds the recital that its claims were denied
9 by Debtors in May 2017. The narrative continues with the
10 allegation that Debtors had a pattern of falsifying records and
11 that in June 2019, SPM's counsel received evidence that Debtors
12 knew that the second strike (on August 7, 2015) was not SPM's
13 fault. There is no mention of the other five strikes or any
14 other problems identified by the hearing officer as SPM's
15 responsibility that led to its termination.

16 The narrative continues with a few sentences describing
17 Debtors' alleged failure to comply with certain city regulations
18 and Government Code provisions dealing with underground
19 utilities. It contains in a final paragraph referring to SPM's
20 termination from the Haight Project.

21 For no apparent reason, the Amended POC sets forth the
22 entire SPM-GBI contract but does not repeat the narrative just
23 summarized.

24 **III. Discussion**

25 **A. The Administrative Hearing**

26 Both sides devote a lot of ink and a portion of the oral
27 argument to the December 19, 2015 administrative hearing and its
28 results. SPM contends that result was not dispositive in any

1 way for a variety of reasons. Debtors contend that the adverse
2 ruling, and in particular the finding of the hearing officer
3 that SPM caused at least four of the strikes based upon its
4 unsafe practices, is dispositive under principles of collateral
5 estoppel.

6 The legal analysis of that ruling under collateral estoppel
7 principles is for another day. Questions about the reach of
8 collateral estoppel principles applied to non-judicial
9 administrative hearings, and which do not include the very same
10 parties who later invoke them, are complex, sometimes uncertain,
11 and certainly not necessary for speculation and conjecture by
12 this court to resolve this dispute. As described below, the
13 Initial POC and the Amended POC must be disallowed for
14 independent and dispositive reasons.

15 B. Locate and Mark Program

16 The parties also spend time on the 2018 investigation by
17 the California Public Utilities Commission whether or not
18 Debtors' "Locate and Mark Program" of natural gas facilities
19 violated various legal requirements. More specifically, the
20 primary focus was on the submission of "tickets" relating to the
21 program and the fact that Debtors' top management was unaware of
22 some of the problems in administering that program while its own
23 staff was aware of them. That was finally resolved and approved
24 by an April 24, 2020 order of this court.

25 The court believes that the discussion of that dispute and
26 its resolution is nothing more than a red herring, designed by
27 SPM to distract from the underlying merits of the Objection to
28 its claim, namely that it - not Debtors - caused five of the six

1 strikes and other problems that are solely the responsibility of
2 SPM, and no one else. The court can find no indication that
3 there is some causal connection between the failure to properly
4 account for "tickets" and SPM's failures. If there was fraud
5 involved in the Locate and Mark Program, SPM has not even come
6 close to showing how it was a victim of such fraud, or
7 reasonably relied to its detriment in any way.

8 C. State Court Litigation

9 Finally, there is a lot of attention given to the state
10 court litigation and various amendments initiated by SPM
11 (originally with no fictitious defendants) and later naming as
12 Doe defendants San Francisco's mayor and its later convicted
13 former Director of Department of Public Works. Again, these
14 allegations and the lengthy history of that litigation do not
15 appear to have any direct bearing on Debtors' potential
16 liability for the matters described in SPM's Proofs of Claim
17 other than the notable absence of Debtors as parties to that
18 litigation.

19 D. The Franchise Agreement

20 An alternative theory of SPM's claim apparently turns on a
21 1939 agreement between Debtors and CCSF regulating its
22 supervision of Debtors' conduct as a utility serving the city in
23 numerous ways. SPM argues that it is somehow a third-party
24 beneficiary of that agreement and that therefore the four-year
25 statute of limitations and saves its claims against Debtors.

26 As a preliminary matter, the Initial POC and the Amended
27 POC, at paragraph 8 of each form, say nothing about any breach
28 of contract or third-party beneficiary theory that might justify

1 the four-year statute of limitations. To repeat what is noted
2 above, both Proofs of Claim allege fraud and related business
3 damages of relating to the strikes. For that reason alone, the
4 court rejects the third-party beneficiary franchise four-year
5 contract theory of recovery.

6 E. Three-Year Statute of Limitation for Fraud

7 At bottom, this dispute turns on whether SPM can recover
8 under non-contract theories based upon events that occurred more
9 than three years prior to Debtors' Chapter 11 bankruptcy on
10 January 29, 2019. The short answer, again, is that it cannot.

11 Despite SPM's contention that a breach of contract occurred
12 in May, 2017 (See Opposition, Dkt. 13719 at ¶ 21: "Although the
13 strikes occurred in 2015, the actual breach of contact occurred
14 in May 2017 when PG&E denied SPM's claims for reimbursement"),
15 the fact is that the operative events occurred in 2015. SPM
16 sued CCSF in 2017 and after the original complaint, several
17 amendments contained fairly routine and boilerplate recitals
18 that Doe defendants were CCSF agents and employees whose
19 identity could be discovered during the action and could be
20 named as Doe defendants. It does not include in those
21 boilerplate allegations Debtors or any of its own
22 representatives, nor could it, as SPM knew well the totality of
23 Debtors' involvement in the Haight Project. In fact, at least
24 two Doe defendants were subsequently identified as Mayor Breed
25 and Director Nuru but at no time was there ever any attempt to
26 substitute Debtors in as Doe defendants.

27 SPM contends that California Code of Civil Procedure § 474
28 ("CCP 474") allows it to add a fictitious defendant not known at

1 the time of the complaint. That is the law, but the
2 unmistakable facts are that SPM knew of Debtors' involvement in
3 the entire Haight Project from the inception, it obviously knew
4 of the strikes that occurred in 2015 and it obviously knew that
5 its claims were denied by Debtors no later than May 2017, prior
6 to when it initiated the Superior Court litigation that it now
7 relies on to justify treating Debtors as Doe defendants when
8 they were not, nor could they have been.

9 CCP 474 is meant to protect the innocent plaintiff who does
10 not know the identity of a prospective defendant at the time an
11 action is brought. *Olden v. Hatchell*, 154 Cal. App. 3d 1032,
12 1037 (1984). The Court in *Olden* elaborates:

13 Section 474 provides in pertinent part: 'When the
14 plaintiff is ignorant of the name of a defendant, he
15 must state that fact in the complaint, or the
16 affidavit if the action is commenced by affidavit, and
17 such defendant may be designated in any pleading or
proceeding by any name, and when his true name is
discovered, the pleading or proceeding must be amended
accordingly'

18 *Id.* Finally, on this point, SPM's reliance on CCP 583.210 is
19 misplaced and of no help, as that section deals with service of
20 a summons.

21 From the foregoing, the court concludes that whether or not
22 SPM could of or should have named Debtors as defendants in the
23 state court litigation, it did not, and it was too late to do so
24 well before the January 2019 bankruptcy filings. The suggestion
25 that alleged fraud was not known or discovered until years later
26 is simply not credible, and in any event lacks even a minimum of
27 specificity to justify including it after the fact.

1 **IV. Conclusion**

2 For the foregoing reasons, the court, even giving SPM the
3 benefit of the narrative that accompanies its Initial POC but
4 inexplicably was not included in the Amended POC, fails to state
5 a claim or relief. Accordingly, the claims must be DISALLOWED.

6 The court is concurrently issuing an order disposing of the
7 claims consistent with this Memorandum Decision.

8 ***END OF MEMORANDUM DECISION****

COURT SERVICE LIST

ECF Recipients